IAB Australia

Submission on the Automated Decision-Making Transparency Obligation (APP 1)

Response to OAIC Issues Paper, 18 May 2026

About IAB Australia

IAB Australia is the industry body for digital advertising in Australia. We bring together members from across the digital advertising supply chain — including media owners, ad tech providers, platforms and agencies — to share knowledge and insights and to support sound policy-making. IAB Australia is one of 47 IAB offices globally and has a local member base of approximately 180 organisations.

Digital advertising is a critical enabler of Australia's broader media, information and technology ecosystem, funding journalism, content creation, and the delivery of online services used by millions of Australians every day. It also plays a crucial role in supporting small and medium-sized businesses and promoting jobs and economic development.

IAB Australia pioneers global solutions and technical standards that promote trust and improve ad experiences for consumers, advertisers, platforms and media. IAB's Board includes representatives from Carsales, Domain, Google, Guardian News & Media, Meta, News Corp Australia, Nine Entertainment, REA Group and Southern Cross Media.

IAB Australia welcomes the opportunity to provide feedback on the OAIC's Issues Paper on the automated decision-making transparency obligation (**ADM Obligation**). Our submission focuses on the ADM Obligation as it applies to the digital advertising industry and on the form and content of required disclosures.

We urge the OAIC to exercise its guidance-making function in a way that gives the ADM Obligation a workable, targeted scope that delivers genuine transparency benefits to consumers, rather than an obligation so broad that disclosures lose their meaning.

As context to this submission, the types of ADM that require disclosure in APP entities' privacy policies are those that meet the following criteria:

1. the entity has **arranged** for a computer program to make, or do a thing that is **substantially and directly related** to making, a **decision**; and

2. the decision could **reasonably** be expected to **significantly affect the rights or interests** of an individual; and

3. **personal information about the individual** is used in the operation of the computer program to make the decision or do the thing that is substantially and directly related to making the decision.[1]

[1] Privacy and Other Legislation Amendment Act 2024, summarised on page 9 of the Issues Paper.

Executive Summary

Key positions

- **The 'significantly affects rights or interests' threshold should be meaningfully limited, as intended by Parliament.** The test should be tied to a discrete 'decision' about an individual that has a direct and material impact on their rights or interests, such as entry to a country, access to healthcare, entitlement to housing benefits, as set out in APP 1.9. It must not be tied to a theoretical possibility of harm or an accumulation of individually insignificant interactions. If interpreted too broadly, the scale of potential disclosures would be both unmanageable and ineffective.

- **'Reasonably' means that the test should be objective and predictable**. The test should address whether a reasonable person would expect that this kind of discrete decision about an individual would have a significant, direct and material impact on that individual's rights and interests, as described above.

- **Ad delivery systems (including differential pricing, algorithmic recommendations and personalisation) do not generate discrete 'decisions' and do not significantly affect an individual's rights and interests**. The Guidance should make clear that content personalisation, routine ad delivery and optimisation (e.g. probabilistic ranking of competing ads within a finite display space) is not, of itself, a decision of the kind contemplated by APP 1.7. Any assessment of significant effect should be confined to narrow circumstances directly connected to a discrete outcome in one of the material categories outlined in APP 1.9. Pricing and personalisation choices are complex commercial judgments made by private businesses. These are wholly different from the binary decisions contemplated in the examples in APP 1.9 and the Explanatory Memorandum.

- **The Guidance should clarify that 'interests' will not be defined by broad administrative law concepts.** The administrative law conception of interests is deliberately broad and targeted at government decision-making under statutory powers. It is not an appropriate model to use unless the ADM Obligation is also limited to those types of decisions. It should not be applied to private sector entities carrying out ordinary commercial activities, including digital advertising.

- **The entity that 'arranged for' the ADM process should be the entity that commissions the decision.** The OAIC should clarify that ad tech intermediaries, platform operators and content providers should not be treated as having 'arranged' decisions, simply because their products, content, services and infrastructure are used to communicate the advertising. In complex digital advertising supply chains, responsibility should be allocated to the entity that makes the relevant decision and determines the objective the campaign is trying to achieve. The obligation should not apply to every entity in the chain.

- **Disclosure should be proportionate, category focused and must not require disclosure of confidential information.** The Guidance should confirm that the obligation to disclose 'the kinds of personal information' and 'the kinds of such decisions' is satisfied by describing categories of information and decisions at a level of generality appropriate to a privacy policy and will not require the disclosure of commercially sensitive information. This is consistent with the Addendum to the Explanatory Memorandum.

1. The ‘significantly affect the rights or interests of individuals’ threshold should be clearly limited as intended by Parliament

Without clear limits, the ADM Obligation risks becoming too broad to be meaningful

The ADM Obligation has a broader scope than its international counterparts as it applies to computer programs that are ‘*substantially and directly related to making a decision*’ rather than only to those that make decisions without any human intervention. By contrast, GDPR only applies to decisions ‘*based solely on automated processing*’[2], meaning that decisions that involve any level of human intervention are not caught.[3]

The breadth of the ADM Obligation reinforces the need to apply limits to the ‘*significantly affects the rights or interests’* threshold, to prevent the ADM Obligation from becoming too widespread to be meaningful.

The ADM Obligation is only valuable if the disclosures it generates are meaningful to the individuals who receive them. If too many decisions are caught by the ADM Obligation (such as routine commercial decisions around algorithmic pricing, content personalisation and delivery) entities will be required to disclose excessive detail in their privacy policies. This is not an effective or consumer friendly solution.

> It will become increasingly rare for business decisions to be made without some automated component. The question of whether a computer program was involved in a decision could soon cease to be a meaningful filter. Accordingly, the threshold of whether a decision could reasonably be expected to significantly affect the rights or interests of an individual becomes the critical limiting principle capable of keeping the ADM Obligation targeted at the decisions that genuinely matter.

The ‘significantly affects’ threshold must retain meaningful limiting force as intended by Parliament

Parliament deliberately chose the qualifier ‘*significantly*’ to exclude insignificant or routine effects on individuals. The examples in the Explanatory Memorandum and the updated APP 1.9 of decisions that meet this threshold include the following:

- granting admission to a country
- entitlement to housing benefits
- access to healthcare
- a decision that affects an individual’s rights under a life insurance policy

These examples all involve discrete, binary outcomes with direct material consequences for an individual’s rights or interests, such as admission to a country, access to healthcare services, entitlement to a housing benefit or access to a significant government service or support. It is worth noting that the example relating to insurance does not extend to advertising the policy but is restricted

GDP Article 22.

[3] Recital 71 of GDPR gives an example of ‘e-recruiting practices without any human intervention’ as being the type of decision that would be caught.

to the exercise of the individual's rights under the policy (e.g. a decision to make a payment to the individual).

The OAIC's Guidance should use the APP 1.9 examples as the benchmark for the meaning of 'significantly affects rights or interests'.

The threshold should require a discrete decision and not a series of lesser interactions

'*Significantly affect*' should be tied to a discrete decision about an individual that has a direct, material impact on their rights or interests in the areas outlined in APP 1.9 (e.g. entry to a country, access to healthcare, entitlement to housing benefits) and produces a definitive outcome (for example, to approve or deny, grant or refuse). This is consistent with the examples given in the Explanatory Memorandum and APP 1.9.

The threshold should not extend to the accumulation of lesser interactions or the theoretical possibility of harm.

The test should be objective and predictable

The test should also be objective and predictable - would a reasonable person expect this type of decision to have a material impact on an individual's rights or interests?

An objective test gives entities a workable compliance standard and avoids the uncertainty that arises from a purely case-by-case assessment.

Recommendations

- **The 'significantly affects rights or interests' threshold should be meaningfully limited, as intended by Parliament.** The test should be tied to a discrete 'decision' about an individual that has a direct and material impact on their rights or interests, such as entry to a country, access to healthcare, entitlement to housing benefits, as set out in APP 1.9. It must not be tied to a theoretical possibility of harm or an accumulation of individually insignificant interactions. If interpreted too broadly, the scale of potential disclosures would be both unmanageable and ineffective.
- **'Reasonably' means that the test should be objective and predictable**. The test should address whether a reasonable person would expect that this kind of discrete decision about an individual would have a significant, direct and material impact on that individual's rights and interests, as described above.

2. Personalised ads do not 'significantly affect rights or interests'

The Explanatory Memorandum comments that:

> '*the use of computer programs to target individuals with content and advertisements may have a significant effect on an individual if, for example, it results in differential pricing for*

provision of, or access to, significant goods or services, or limits access to employment opportunities'.[4]

IAB Australia submits that routine targeted advertising and ad delivery optimisation do not, of themselves, reach the threshold of the ADM Obligation because they do not involve discrete, determinative decisions about an individual and do not ordinarily have a direct and material impact on an individual's rights or interests. Where advertising is used in connection with a separate, discrete decision in a material category (for example, entry to a country, a housing benefit, access to healthcare, or access to an essential government service), the significant-effect assessment should focus on that decision and its material outcome, not the general fact of ad targeting.

Targeted advertising does not involve relevant 'decisions'

The use of an algorithm that ranks one advertisement above another, or the use of signals to direct advertising content, do not constitute 'decisions' capable of triggering the ADM Obligation.

The examples of decisions in the Explanatory Memorandum and APP 1.9 involve discrete determinations with direct, material consequences for an individual's rights or interests (for example, access to healthcare, entry to a country, entitlement to a housing benefit). They require analysis of individual circumstances and lead to a clear outcome (e.g. a visa is granted or an application is refused). The serving of advertisements to individuals has none of these attributes.

Targeted advertising does not significantly affect an individual's rights and interests

(a) No individual is denied access to goods and services as a result of targeted advertising

Targeted advertising does not affect an individual's access to goods or services. An advertisement, whether delivered digitally or through television, radio, print or outdoor media, is simply an invitation to consider a product or service. It does not grant or deny access. A person who does not receive a particular advertisement is not excluded from that product or service - they simply have not been prompted to consider it through that channel.

This is true across the entire media ecosystem - a consumer who does not see a car advertisement in a newspaper is not denied access to the car market, just as a consumer who is not served a digital advertisement for a financial product is not denied access to that product.

The targeting of advertisements (the matching of promotional messages to audiences more likely to find them relevant) is a mechanism for making advertising more useful, not a mechanism for allocating access to goods or services.

(b) Personalised pricing does not significantly affect an individual's rights and interests

4 https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fems%2Fr7249_ems_a01fc1bd-4aa3-4fc2-87d7-ed8aa84ab564%22

The use of computer programs in determining prices will not ordinarily trigger the ADM Obligation (see above). Pricing decisions are complex commercial judgments made by private businesses. They are wholly different from the binary decisions, affecting individual rights, contemplated by the examples in the Explanatory Memorandum and APP 1.9.

Businesses offer different prices to different consumers for a variety of legitimate reasons. It may be reasonable to charge a lower or higher price for a product for a variety of reasons, including delivery costs, risk factors (e.g. insurance), and variances in supply and demand. Individuals also may receive personalised pricing through participation in loyalty schemes. These are all elements of a market functioning productively and fairly.

Vulnerable groups

The OAIC notes that processing with little impact generally may have a significant effect for certain groups, for example a person in financial difficulty targeted with advertisements for high-interest loans.[5]

IAB Australia understands this concern but submits it cannot be operationalised on a case by case basis in digital advertising. Commercial entities are not well placed to make assessments as to an individual's vulnerability.

Entities would need to know whether a given individual is in financial difficulty, whether they are from a particular ethnic demographic, whether they live in aged care, have a mental illness or addiction issues. This information is not generally available and would require the collection of sensitive personal information, which would not be in the best interests of these groups and would be inconsistent with privacy preserving principles.

If vulnerability is taken into account, it should be as the context to a decision directed at a particular class of people (e.g. the Robodebt case). It is not a factor that can be assessed on an individual basis by commercial entities.

'Behaviour choices' should not be included as a factor that determines whether a decision has a significant effect on an individual

The Issues Paper notes that the UK ICO's guidance includes 'behaviour choices' among the relevant factors to be considered when assessing whether a decision has a significant effect on someone. IAB Australia submits that it should not be incorporated into the OAIC's Guidance.

Behaviour choices: An advertisement that influences a consumer's purchasing decision could be characterised as affecting their 'behaviour choices.' This could bring virtually all targeted advertising within the scope of the ADM Obligation. The purpose of advertising is to inform and influence. A framework that characterises influence as a harm to 'behaviour choices' could erode legitimate commercial communication and may inadvertently undermine an individual's ability to make autonomous choices based on information.

[5] Issues Paper, page 17.

Recommendation

Ad delivery systems (including differential pricing, algorithmic recommendations and personalisation) do not generate discrete ‘decisions’ and do not significantly affect an individual’s rights and interests. The Guidance should make clear that content personalisation, routine ad delivery and optimisation (e.g. probabilistic ranking of competing ads within a finite display space) is not, of itself, a decision of the kind contemplated by APP 1.7. Any assessment of significant effect should be confined to narrow circumstances directly connected to a discrete outcome in one of the material categories outlined in APP 1.9. Pricing and personalisation choices are complex commercial judgments made by private businesses. These are wholly different from the binary decisions contemplated in the examples in APP 1.9 and the Explanatory Memorandum.

3. The assessment of ‘interests’ should not import administrative law principles

The Issues Paper draws on administrative law to inform the meaning of ‘interests.’[6] IAB Australia submits that this approach is misconceived and that the OAIC’s guidance should make clear that administrative law concepts are not directly applicable to the assessment of ‘interests’ in the context of the ADM Obligation.

Administrative law ‘interests’ are linked to government decision-making

The concept of ‘interests’ in administrative law, encompassing legal status, personal liberty, livelihood, commercial interests, immigration status and planning rights, has been developed in the specific context of decisions made by public bodies exercising statutory or executive powers.

The breadth of the administrative law concept of interests is deliberate. It ensures that individuals affected by the exercise of public power have access to procedural fairness protections, including the right to be heard and the right to reasons. The *Administrative Decisions (Judicial Review) Act 1977 (Cth)* and the *Administrative Review Tribunal Act 2024 (Cth)* operate where decision-makers exercise powers conferred by Parliament, with the full range of public law protections available.

Applying this threshold to all APP entities is disproportionate

Importing the administrative law concept of interests into a framework that applies to all entities subject to the Privacy Act would be an inappropriate overreach.

Private sector entities do not exercise statutory decision making powers. The procedural fairness obligations that justify the breadth of the administrative law concept of ‘interests’ simply do not exist in the private sector context.

The practical consequence of importing administrative law interests would be to make the ADM Obligation apply to an enormous range of ordinary commercial decisions - what products to show a

[6] Issues Paper, page 16.

customer, what price to charge, what content to recommend - none of which carry the kind of significance that the ADM Obligation is designed to address.

Existing sector-specific protections are sufficient for digital advertising

People's interests in the digital advertising context are already protected by a well-developed set of sector-specific rules - restrictions on advertising of therapeutic goods, prohibitions on misleading and deceptive conduct under the Australian Consumer Law, requirements for specific disclaimers in financial and investment advertising and prohibitions on advertising certain products to children. These protections are targeted, clear and effective. The ADM transparency framework should not duplicate or overlay them.

> **Recommendation**
> **The Guidance should clarify that 'interests' will not be defined by broad administrative law concepts.** The administrative law conception of interests is deliberately broad and targeted at government decision-making under statutory powers. It is not an appropriate model to use unless the ADM Obligation is also limited to those types of decisions. It should not be applied to private sector entities carrying out ordinary commercial activities, including digital advertising.

4. The entity that 'arranged for' the ADM process should be the entity that makes the decision

The Issues Paper notes that:

> '*The words 'arranged for' clarify that it is the entity responsible for arranging the computer program to make or assist a decision which must meet the requirements in APP 1.7. This recognises that a computer program may be operated by one entity, but another entity is responsible for arranging for the computer program to make or assist a decision*'.[7]

IAB Australia supports the principle that the entity responsible for a decision should bear the disclosure obligation. However, the concept of 'arranged for' creates significant practical difficulties in the context of modern technology supply chains, which are complex, multi-layered and involve numerous parties at different stages.

The entity that 'arranges for' ADM is the entity that commissions the decision

The entity that 'arranges for' ADM is the entity that (a) commissions the decision for its own purposes; and (b) determines the objective the program is trying to achieve. This is the entity that selects the decision objective and deploys the system toward that objective.

[7] Issues Paper, page 20.

Technology providers, publishers, platform operators and infrastructure hosts that do not themselves commission decisions should not be treated as having 'arranged for' those decisions merely because they provide content, build or maintain the systems.

The OAIC's own examples support this distinction - procuring an AI system to screen job applications, directing employees to use AI for performance assessments, and contracting software to approve or decline refunds all involve the commissioning entity.[8]

Guidance on third-party ADM

The Issues Paper suggests that entities should 'monitor 3rd party ADM usage' and 'actively identify, assess and keep oversight over how a 3rd party product/service uses ADM.'[9]

IAB Australia accepts that entities should have reasonable oversight of the systems they procure. However, the guidance should be realistic about what oversight is achievable within a complex technological chain. It would be helpful if the Guidance could acknowledge this complexity and set out realistic parameters of responsibility.

Recommendation

The entity that 'arranged for' the ADM process should be the entity that commissions the decision. The OAIC should clarify that ad tech intermediaries, platform operators and content providers should not be treated as having 'arranged' decisions, simply because their products, content, services and infrastructure are used to communicate the advertising. In complex digital advertising supply chains, responsibility should be allocated to the entity that makes the relevant decision and determines the objective the campaign is trying to achieve. The obligation should not apply to every entity in the chain.

5. Disclosures should be category based, proportionate and should not require disclosure of commercially sensitive information

Disclosures should be category based

APP 1.8 requires the disclosure of the *kinds* of personal information used and the *kinds* of decisions made (where the conditions in APP 1.7 are met).

This is categorical and general by design. It reflects a deliberate legislative choice that privacy policy disclosures should operate at a level of generality appropriate to their purpose, giving individuals an overview of how their information is used. The disclosures are not intended to provide a technical specification of every system and data point involved.

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[8] Issue Paper, page 21
[9] Issues Paper, page

The OAIC's Guidance should confirm that the ADM Obligation is satisfied by describing broad categories of personal information and broad categories of decisions, without requiring granular detail about individual systems, datasets or decisions. This is consistent with the legislative drafting.

The Guidance should also avoid treating foreign frameworks (e.g. the UK ICO's multi-element ADM transparency guidance) as a binding checklist under APP 1.7-1.9, given Parliament adopted a transparency only, privacy policy level obligation that is materially different in structure and purpose.

Disclosures should not include commercial-in-confidence information

The Addendum to the Explanatory Memorandum states that:

> '*The obligation on entities to include information in their privacy policy about the kinds of personal information used in such computer programs and the kinds of such decisions is not expected to include commercial-in-confidence information about automated decision-making systems'*[10]

The Addendum to the EM recognises that disclosures under the ADM Obligation are not expected to include confidential information. The OAIC's Guidance should reiterate this point and confirm that entities are not required to disclose sensitive implementation details such as model logic, signal weighting, training data composition, or computational methodologies, particularly where such disclosure could be exploited by competitors or result in safety and integrity protections being undermined.

Recommendation

Disclosure should be proportionate, category focused and must not require disclosure of confidential information. The Guidance should confirm that the obligation to disclose 'the kinds of personal information' and 'the kinds of such decisions' is satisfied by describing categories of information and decisions at a level of generality appropriate to a privacy policy and will not require the disclosure of commercially sensitive information. This is consistent with the Addendum to the Explanatory Memorandum.

6. Conclusion

IAB Australia supports the policy objective of giving individuals greater transparency about automated systems that significantly affect their rights and interests in the material categories outlined in APP 1.9, such as entry to a country, access to healthcare or entitlement to a housing benefit.

[10] Addendum to Explanatory Memorandum, paragraph 38 (addition to paragraph 341(c) of the Explanatory Memorandum).

However, consumers only benefit if the disclosures are meaningful. An ADM Obligation that is so broad that every entity must disclose dozens of ADM use cases will produce overly complex privacy policies, which will not serve consumers.

The Guidance should make it clear that ad delivery systems (including differential pricing, algorithmic recommendations and personalisation) do not generate discrete 'decisions', do not significantly affect an individual's rights and interests and generally will not be caught by the ADM Obligation.

IAB Australia would be happy to discuss any aspect of this submission further with the OAIC.

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